

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN ROETTGEN,

Plaintiff,

V.

D. PARAMO, ET AL.,

Defendant.

Case No.: 3:16-cv-01806-LAB-BGS

**ORDER DISMISSING CIVIL
ACTION FOR FAILING
TO STATE A CLAIM PURSUANT
TO 28 U.S.C. § 1915(e)(2) AND
§ 1915A(b) AND FOR FAILING TO
PROSECUTE IN COMPLIANCE
WITH COURT ORDER
REQUIRING AMENDMENT**

I. Procedural History

Plaintiff, an inmate currently incarcerated at the California State Prison – Sacramento, located in Represa, California, initially filed this action on July 11, 2016. (ECF No. 1.) On July 21, 2016, this Court granted Plaintiff’s Motion to Proceed *In Forma Pauperis* (“IFP”) and dismissed his Complaint (“FAC”) pursuant to 28 U.S.C. § 1915(e)(2). (ECF No. 3.) The Court found a number of deficiencies in his pleading but nevertheless, Plaintiff was granted forty-five (45) days leave to file an amended complaint. (*Id.* at 10-11.)

On February 13, 2017, nearly seven months after the Court dismissed this action, Plaintiff filed a “Motion for Copy of Court Order, Reinstate Case and for 45 days in which

1 to file First Amended Complaint.” (ECF No. 5.) The Court denied Plaintiff’s Motion to
2 reopen the case but granted him additional time to file an amended complaint. (ECF No.
3 5.) The Court also directed the Clerk of Court to mail a copy of the Court’s July 21, 2016
4 Order to Plaintiff. (*Id.*) Plaintiff then filed second extension of time and claimed that
5 prison officials had confiscated his legal materials. (ECF No. 8.) The Court granted
6 Plaintiff’s request for additional time on August 1, 2017. (ECF No. 9.) However, Plaintiff
7 waited an additional year to bring his third request for an extension of time to file his First
8 Amended Complaint. (ECF No. 11.)

9 Nonetheless, on September 13, 2018 the Court found good cause to grant Plaintiff
10 one final extension of time in which to comply with its July 21, 2016 Order, and permitted
11 Plaintiff an additional forty five (45) days to file his First Amended Complaint. (ECF No.
12 12.) Plaintiff was cautioned that if he failed to comply with the Court’s Order, the Court
13 would enter a final Order of dismissal. (*Id.*)

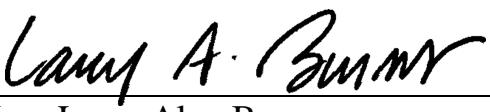
14 The 45 days given to file an amended pleading has since passed. Plaintiff has failed
15 to amend, and has not asked for an extension of time in which to do so. “The failure of the
16 plaintiff eventually to respond to the court’s ultimatum—either by amending the complaint
17 or by indicating to the court that [he] will not do so—is properly met with the sanction of a
18 Rule 41(b) dismissal.” *Edwards v. Marin Park*, 356 F.3d 1058, 1065 (9th Cir. 2004).

19 **II. Conclusion and Order**

20 Accordingly, the Court **DISMISSES** this civil action in its entirety without
21 prejudice, based on Plaintiff’s failure to state a claim upon which § 1983 relief can be
22 granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b) as set forth in the Court’s
23 July 21, 2016 Order, and his failure to prosecute pursuant to FED. R. CIV. P. 41(b) in
24 compliance with the Court’s September 13, 2018 Order. The Clerk of Court shall close
25 the file.

26 **IT IS SO ORDERED.**

27 Dated: November 7, 2018



Hon. Larry Alan Burns
United States District Judge